

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1 and 22 of the)	WT Docket No. 12-40
Commission's Rules with Regard to the Cellular)	
Service, Including Changes in Licensing of)	RM No. 11510
Unserved Area)	
)	
Amendment of the Commission's Rules with)	
Regard to Relocation of Part 24 to Part 27)	
)	
Interim Restrictions and Procedures for Cellular)	
Service Applications)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”) hereby submits these Comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) seeking comment on a proposed revision of the licensing model for the Cellular Radiotelephone Service (“Cellular”) from a site-based model to a geographic-based approach.¹ While CTIA is pleased that the Commission shares this goal, the Commission’s proposed overlay license framework is not the answer to the identified problem, and would provide no tangible benefits while infringing upon the rights of licensees that have devoted decades to serving the public interest. CTIA urges the Commission to lift the highly burdensome regulatory requirements not shared by competitive services in other bands by transitioning Cellular licensing to a market-based regime. Specifically, the Commission should deem that all existing Cellular licensees should be classified as market-based licenses, with the geographic boundaries of each license being determined by each licensee’s currently-authorized Cellular Geographic Service Area (“CGSA”).

¹ *Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, Notice of Proposed Rulemaking and Order, FCC 12-20 (Feb. 15, 2012) (“*NPRM*”).

Under this mechanism, the current coverage provided by cellular licensees (the CGSA) will be established as the “geographic area” licensed, with the ability to make changes that do not extend the existing coverage footprint. A party wishing to obtain a license for an unserved area or extend their existing geographic market area could do so through the Commission’s well-known Phase II application process.

When CTIA first proposed changes to the regulatory framework governing Cellular licensing, it noted that a market-based approach “would provide a consistent and current foundation for Commission licensing that reflects the areas where cellular licensees actually are providing service following the transition from analog to digital.”² For nearly thirty years, Cellular licensees have provided innovative, highly beneficial wireless service to the public, all while being subjected to highly burdensome filing obligations based on a now outdated “command and control” regulatory approach. CTIA urges the Commission to remove these burdens by transitioning Cellular licenses to market-based licenses, as described below.

I. CTIA URGES THE COMMISSION TO RELIEVE CELLULAR LICENSEES OF UNIQUE AND HIGHLY BURDENSOME REGULATORY REQUIREMENTS.

A. Cellular Licensees Are Subjected To Regulatory Treatment That Is Inconsistent With Other Substantially Similar CMRS Providers.

CTIA commends the Commission for correctly concluding in the *NPRM* that “the significant administrative burdens on [cellular] licensees associated with the site-based model no longer appear to be outweighed by the public interest benefits produced.”³ Cellular licensees are

² Petition for Rulemaking of CTIA – The Wireless Association®, RM-11510, at 2 (Oct. 8, 2008) (“CTIA Petition”).

³ *NPRM* at ¶ 1. The Commission has consistently touted the benefits of geographic area licensing. See, e.g., *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, ¶ 89 (2002) (“Consistent with the comments submitted in this proceeding, we adopt a geographic area licensing approach to assign licenses in the Lower 700 MHz Band. This is consistent with our past experience that geographic area licensing, as compared to site-specific licensing, offers licensees superior flexibility to respond to market demands.”).

regulated far differently than their counterparts in other bands. Geographic-based licensing, which other competitive services employ, generally authorizes construction anywhere within the authorized license area, subject to certain technical requirements. In fact, broadband PCS, AWS-1, and 700 MHz licensees are free to build out their licenses within their respective markets and are only required to make filings with the FCC where environmental protection or frequency coordination issues are raised.⁴ As a result, licensees in these services make far fewer filings with the Commission than Cellular licensees in the course of building out and expanding their service areas – a framework that has facilitated deployment of advanced services to customers without any adverse effect on other licensees. In fact, since CTIA filed its Petition for Rulemaking in 2008, Cellular licensees have filed 2,980 modification applications with the Commission, while broadband PCS licensees, by comparison, have filed just 202 applications.⁵ The current Cellular licensing regime requires unnecessary application filings that provide no needed information to the public or Commission and little protection from interference for other affected licensees. Accordingly, the outdated Cellular licensing regime should be removed and replaced with a system consistent with other substantially similar wireless broadband services. Indeed, in amending Section 332 of the Communications Act, Congress intended to ensure that “consistent with the public interest, similar services are accorded similar regulatory treatment.”⁶

⁴ 47 C.F.R. § 1.929(a)-(b) (classifying as a major action modifications to any license that would have a significant environmental impact or which would require frequency coordination pursuant to the Commission’s rules or international treaty or agreement, while imposing substantial additional requirements on cellular licensees only).

⁵ To determine these numbers, CTIA performed a search in the “Applications” database of the Commission’s Universal Licensing System (“ULS”). CTIA used the following search parameter: (1) “Cellular” and “Broadband PCS” were entered in the “Radio Service Code” fields for the respective searches; (2) “Modification” was entered in the “Application Purpose” field; (3) amendment filings were excluded; and (4) the “Entered Date” range was from October 8, 2008 through May 8, 2012

⁶ H.R. Rep. 103-213, 103rd Cong., 1st Sess. 494 (1993). *See also* H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 259-60. *See also Application by BellSouth Corporation, et al. Pursuant to Section 271 of*

It is clear that the current model has no public benefit and has created significant difficulties for Cellular licensees. As Verizon Wireless noted, when a Cellular licensee needs to expand or decrease its CGSA, “licensees are required to prepare technically-complex filings that Commission staff must then review and approve, often for the very limited purpose of determining license rights to very small slivers of geographic area.”⁷ U.S. Cellular, meanwhile, has described the existing Cellular licensing system as “archaic” and having the “central flaw” of defining license boundaries by obsolete analog signal contours.⁸ And AT&T notes that “[t]his level of inflexibility leads to network inefficiency, as well as administrative inefficiency. It further leads to delays in the provision of advanced wireless services, as a routine change to a cellular network requires the cellular licensee to delay the effect of the change in order to prepare and prosecute site-based filings.”⁹

As CTIA observed in its Petition for Rulemaking, the conversion of Cellular licensing from a site-based model to a geographic-based model has numerous benefits: it will eliminate unnecessary and burdensome information collecting requirements, it will enhance the accuracy of the Commission’s licensing database, and it will create regulatory parity with other competitive CMRS offerings.¹⁰ Further, and most importantly, this transition will facilitate the provision of wireless service to customers by permitting Cellular licensees to modify their

the Communications Act to Provide In-Region InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶ 72 n. 259 (1998) (“The Commission has consistently found that section 332 of the Act requires that similar types of mobile service, such as broadband PCS and cellular, be regulated similarly.”).

⁷ Comments of Verizon Wireless, RM-11510, at 2 (Feb. 23, 2009) (“Verizon Wireless Comments”).

⁸ Reply Comments of United States Cellular Corporation, RM-11510, at 2 (Mar. 9, 2009).

⁹ Comments of AT&T Inc., RM-11510, at 4-5 (Feb. 23, 2009).

¹⁰ CTIA Petition at 6.

systems free of the majority of administrative requirements they face today. It also will be consistent with the Obama Administration's calls for efficiencies in federal regulation,¹¹ a policy the Commission has embraced.¹²

B. The Commission Should Adopt A CGSA-based Geographic Area Licensing Scheme For Cellular Licensees.

Given the extensive licensing history for Cellular that is based upon Cellular Geographic Service Area ("CGSA") requirements, CTIA strongly supports applying the CGSA geographic areas as the appropriate metric for Cellular licensing. The Commission should deem that all existing Cellular licensees should be classified as market-based licenses, with the geographic boundaries of each license being determined by each licensee's currently-authorized CGSA. Under this mechanism, the current coverage provided by cellular licensees (the CGSA) will be established as the "geographic area" licensed, with full flexibility to make changes that do not extend the existing coverage footprint. A party wishing to obtain a license for an unserved area or extend its existing geographic market area could do so through the Commission's Phase II application process. To the extent there is mutual exclusivity for an unserved area, the Commission currently has competitive bidding procedures in place to address that situation and would not need to adopt new regulations.¹³

¹¹ President Barack Obama, Exec. Order 13563, FR 3821 (2011); President Barack Obama, Exec. Order 13579, FR 41857 (2011) (stating that regulations should take into account both costs and benefits and be tailored to have the least burden on society); Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, Memorandum for the Heads of Executive Departments and Agencies at 1 (Mar. 20, 2012) (directing the heads of Executive departments and agencies "to take account of the cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules.")..

¹² See, e.g. Press Release, FCC, Statement from Chairman Genachowski on the Executive Order on Regulatory Reform and Independent Agencies (July 11, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf; Press Release, FCC, FCC Chairman Genachowski Continues Regulatory Reform to Ease Burden on Businesses, (Aug. 23, 2011), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0822/DOC-309224A1.pdf.

¹³ 47 C.F.R. §§ 22.949(b); 22.960.

This system will decrease regulatory burdens for licensees – by eliminating the requirement that licensees make modification filings for changes that do not affect the CGSA boundary – without eroding licensee rights, as implicated by the Commission’s overlay auction proposal. In fact, CTIA’s framework will go farther in relieving filing burdens for licensees than the Commission’s proposal, as the Commission would require licensees in the Stage II transition group to wait seven years before they could take advantage of geographic-based licensing and its associated benefits.¹⁴ As noted above, nearly 3,000 Cellular modifications have been filed since the Commission initiated this proceeding in 2008. The vast majority of these modification applications would no longer be necessary under this CGSA market area licensing framework. Instead, Cellular licensees would be treated in a substantially similar fashion as, for example, PCS licensees: filings only would be required if an applicant sought to serve a currently unserved area or if the FCC needed to review an environmental assessment.

This market area licensing approach is a logical solution to the complexities and inefficiencies that currently plague the Cellular licensing process, particularly given the lengthy history of the Cellular licensing service and resulting unique geographic coverage issues. For example, there currently exist Cellular Market Areas (“CMAs”) where multiple providers are licensed to provide Cellular service on the same frequencies. In the Texas 7 – Fannin CMA, there are six different active B Block cellular licenses, held by four different companies.¹⁵ In North Carolina 2 – Yancey, there are three active B Block cellular licensees held by Carolina

¹⁴ *NPRM* at ¶ 37.

¹⁵ These licenses are call signs KNKN730, KNKN731, KNKN732, KNKN733, KNKN734, and KNKN735 and are held by Peoples Wireless Services, ETEX Communications, and subsidiaries of AT&T and Verizon Wireless.

West Wireless, U.S. Cellular, and Allied Wireless Communications Corporation.¹⁶ Under CTIA's proposed licensing rubric, each of these Cellular licensees would continue to have their existing CGSA coverage areas and would be completely accommodated.¹⁷

In contrast, the framework suggested by the Commission would impose considerable complications. The Commission's proposal would result in licensees having their expansion rights cut off by the party that acquires the overlay license, because there could only be one overlay licensee in each market. And in such markets, the incumbent who may be best suited to expand into currently unserved areas may find that it loses any right to do so to an overlay licensee that lacks the incentive or means to build in that area. There are other markets where licensees have been authorized for CGSA extensions that extend into a neighboring CGSA.¹⁸ Also, the interference protection rules in place for the Cellular service have resulted in irregular boundaries of protected coverage in the Cellular service. A conversion to market area licensing will make these unusual licensing situations more understandable to the public while maintaining the rights of the individual licensees.

II. THE COMMISSION'S PROPOSED OVERLAY LICENSE FRAMEWORK WOULD INFRINGE UPON THE RIGHTS OF INCUMBENT LICENSEES WITH NO DISCERNABLE BENEFIT

CTIA opposes the "overlay auction" scheme outlined by the Commission in the *NPRM*, as it would unjustifiably infringe upon the rights of Cellular licensees while providing them with no discernable benefit. In the *NPRM*, the Commission has proposed to include in its Stage I

¹⁶ These call signs are KNKN881, KNKN982, and KNKQ338.

¹⁷ Further, under this proposal licensees in CMAs with unique licensing history and circumstances like the Gulf of Mexico and Alaska will continue to have the flexibility to develop and extend services in accordance with past practices.

¹⁸ Section 22.912(a) of the Commission's rules states that service area boundaries may be extended into adjacent cellular markets if such extensions are *de minimis*. 47 C.F.R. § 22.912(a).

transition all “Substantially Licensed” CMA blocks and auction CMA-based overlay licenses for these markets.¹⁹ Under this regime, incumbent Cellular licensees that have built out their licenses to near completion would be required to protect the overlay licensee from harmful interference, and would have less flexibility to expand or modify their systems.²⁰ CTIA opposes this proposal as improperly undermining the rights of licensees that have made enormous investments in these markets and have been providing valuable service to the public for nearly three decades.

The Commission’s proposal contradicts the basic tenets of the Communications Act. Section 309(j)(6)(E) of the Act reiterates the Commission’s obligation in the public interest to use engineering solutions, negotiation, and other means to avoid mutual exclusivity in application and licensing proceedings. Indeed, the Commission has properly acknowledged that it must take steps to avoid mutual exclusivity where it is in the public interest to do so.²¹ Here, the Commission has instead proposed to fabricate mutual exclusivity where there currently is none – with no associated public interest benefits – and to undermine the interests of existing Cellular licensees who have properly built out their systems in accordance with the Commission’s requirements.

¹⁹ *NPRM* at ¶¶ 27-30.

²⁰ *NPRM* at ¶ 30 (“In addition, in the event that all or a portion of an incumbent’s CGSA is relinquished by that incumbent (*e.g.*, through license cancellation, reduction in CGSA, permanent discontinuance of operations, or failure to renew a license), the Overlay Licensee of that CMA Block would no longer be required to protect the relinquished area and could immediately provide service on a primary basis in that area.”); *NPRM* at ¶ 31 (“Under our proposal, just as incumbents that do not become Overlay Licensees would be assured continued protection from harmful interference within their existing CGSA footprint, they would in turn be obligated to protect the Overlay Licensees from harmful interference. Non-Overlay licensees’ CGSA boundaries would be permanently fixed, insofar as such licensees would not be permitted to expand their CGSAs in Blocks included in the auction, except through contractual arrangements with other licensees.”).

²¹ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, ¶ 15 (2011).

Further, the overlay auction proposal is arbitrary and capricious and inconsistent with the Commission's precedent. Essentially, the Commission would subject Cellular licensees to competitive bidding processes to obtain "rights" that these licensees have already obtained. At "best," an incumbent licensee would be paying for the privilege of maintaining the status quo. At worst, however, the incumbent would find its existing rights substantially infringed by the presence of a third party overlay licensee. This could create an incentive to "game the system," whereby an overlay licensee (with no intent to actually build out and serve the CGSA) could make frivolous claims, challenging the Cellular licensee's coverage solely to extract a financial settlement. Such a framework is unjustifiable given the enormous expense undertaken by Cellular licensees in the course of building out and upgrading their networks and providing service to the public. In fact, the Commission's proposal in footnote 96 of the *NPRM* to offer competitive bidding for overlay "rights" *even where no unserved areas exist* in a CMA block defies any rational basis and only serves to undermine the investment-backed expectations of incumbent Cellular licensees.²²

In the *NPRM*, the Commission suggests that precedent supports its proposal to engage in an overlay license auction in these markets. However, this is not the case. As the Commission notes in the *NPRM*, the vast majority of Cellular markets have been constructed in excess of 90 percent by one or more Cellular licensees. These licensees have far exceeded the buildout threshold set for nationwide paging licenses to gain exclusivity and thus exemption from competitive bidding. When the Commission granted nationwide paging licenses, licensees were only required to have 300 transmitters constructed nationally to qualify for nationwide

²² *NPRM* at n. 96.

exclusivity.²³ As paging transmitters were deemed to provide a radius of coverage of 20 miles,²⁴ paging licensees who covered approximately 20 percent of the United States geographically were granted nationwide licenses without the need for an overlay auction. If 20 percent coverage was considered sufficient to grant an exclusive license without an overlay auction, then the much greater coverage provided by Cellular licensees certainly should entitle them to exemption from any overlay auction scheme. CTIA strongly believes that the overlay auction regime suggested in the *NPRM* is inconsistent with past precedent, is arbitrary and capricious and at odds with the Commission's statutory obligations to avoid mutual exclusivity where possible. CTIA urges the Commission to reject the *NPRM* proposals and instead adopt the CGSA-based market area licensing scheme suggested by CTIA herein.

III. CONCLUSION.

CTIA strongly supports the principals of regulatory efficiency and parity that have driven the push for market area licensing of cellular spectrum. Such market area licenses will result in numerous benefits to licensees and the public. CTIA urges the Commission to adopt regulations that promote these benefits without engaging in overlay auctions that would erode licensee rights with little public benefit.

²³ *Paging Systems (Geographic Area Licensing and Competitive Bidding Rules, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732, ¶¶ 46, 50 (1997) (“We have recently allowed 929 MHz licensees to earn nationwide exclusivity under Section 90.495 by constructing networks of at least 300 transmitters that meet certain criteria for coverage of major markets and regional areas. . . . In our view, it would not serve the public interest or be fair to take away exclusivity rights that these licensees earned before the commencement of this proceeding. The record indicates that they have developed successful and efficient nationwide networks under the pre-existing rules -- in fact, in most cases they have substantially exceeded the construction thresholds required to earn nationwide exclusivity under those rules. Thus, we do not believe imposition of competitive bidding is needed to further the goal of developing competitive nationwide paging networks on these channels.”).

²⁴ *Id.* at ¶ 68; 47 C.F.R. § 22.537.

Respectfully submitted,

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